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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/994,087	11/21/2001	John David Strength	5370	7844

7590                    07/08/2003

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EXAMINER

BEFUMO, JENNA LEIGH

ART UNIT	PAPER NUMBER
1771	S

DATE MAILED: 07/08/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)
	09/994,087	STRENGTH ET AL.
Examiner	Art Unit	
Jenna-Leigh Befumo	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 1,2 and 4-6 is/are allowed.
- 6) Claim(s) 7-24 is/are rejected.
- 7) Claim(s) 3 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4 .	6) <input type="checkbox"/> Other: _____

## **DETAILED ACTION**

### ***Oath/Declaration***

1. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:

The filing date of the specification to which the oath or declaration is directed is recorded as November 21, 2002, instead of the actual filing date of the application which is November 21, 2001. See MPEP § 601.01(a).

### ***Claim Objections***

2. Claims 3, 9 and 20 are objected to because of the following informalities: the list of objects includes twigs twice. Appropriate correction is required.
3. The term “camouflage” is interpreted as any graphic, image, or design since the Applicant teaches that the “camouflage” design can include images of objects.

### ***Claim Rejections - 35 USC § 102/103***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 7, 8, 10, 13, 17 – 19, 21, and 24 are rejected under 35 U.S.C. 102(e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Sandt et al. (2002/0127361 A1).

Sandt et al. discloses a laminate comprising a facestock layer with an upper surface and a lower surface, a heat-activatable first adhesive layer bonded to the lower surface of the facestock, and a second adhesive layer bonded to the upper surface of the facestock (page 2, paragraph 37). The facestock material can be made from textile materials such as woven and nonwoven fabrics made from synthetic fibers (page 3, paragraph 49). Thus, the facestock layer corresponds to the Applicant's base textile. The laminate further includes pictorial ink or graphics layer positioned between the upper surface of the facestock and the second adhesive layer (page 2, paragraph 38). These images are added to produce printed or pictorial designs which are used as labels or decals and would inherently contain images of objects (Page 1, paragraph 1). Thus, the upper surface corresponds to the Applicant's first side with a pattern. The first adhesive layer is a thermoplastic layer made from various polymeric resins including ethylene methyl acrylate (page 4, paragraph 56). The first adhesive layer can include various particulate additives which would pigment or color the layer includes diatomaceous earth, ceramic particles, and calcium carbonate particles (page 5, paragraph 59).

Although Sandt et al. does not explicitly teach the limitations visible light transmission, it is reasonable to presume that said limitations are inherent to the invention. Support for said presumption is found in the use of similar materials (i.e. pigmented thermoplastic layer and woven fabric layer) and in the similar production steps (i.e. laminating the thermoplastic layer to

the fabric layer and applying a graphic image to one side of the fabric layer) used to produce the laminate. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the claimed visible light transmission would obviously have been provided by the process disclosed by Sandt et al. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102. Therefore, claims 7, 8, 10, 13, 17 – 19, 21, and 24 are rejected.

7. Claims 7, 10, 11, 13, 14, 16, 18, 21, 22, and 24 are rejected under 35 U.S.C. 102(a and e) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Nelson et al. (6,194,329).

Nelson et al. discloses a laminate which provides visual opacity and has different colors patterns on each side of the laminate (abstract). The laminate is made from a woven textile fabric have polyester yarns and weighing between 1.6 to 1.9 oz/yd<sup>2</sup> (column 4, lines 20 – 30). The fabric is coated on one side with three coating layers, a base coat, a mid-coat, and a third coating, all of which include pigments that prevent the transmission of light (column 2, lines 35 – 58). The three coating layers weigh a maximum of 2.0 to 2.3 oz/yd<sup>2</sup> (column 2, lines 59 – 61). Therefore, the total weight of the laminate is 3.6 to 4.2 oz/yd<sup>2</sup>. The mid-coat layer is made from a polyester polyurethane layer which is a thermoplastic polymer, to which carbon black pigment can be added (column 4, lines 58 – 63). The mid-coat layer contains 5 to 15% pigment. The fabric is produced so that the two opposites sides have different patterns which can be used as camouflage in different environments such as woodsy areas or snowy areas (column 3, lines 52 – 55).

Although Nelson et al. does not explicitly teach the limitations visible light transmission, it is reasonable to presume that said limitations are inherent to the invention. Support for said

presumption is found in the use of similar materials (i.e. pigmented coating layers and a patterned woven fabric layer) and in the similar production steps (i.e. applying the coating layers to the woven fabric) used to produce the camouflage laminate. The burden is upon the Applicant to prove otherwise. *In re Fitzgerald*, 205 USPQ 594. In the alternative, the claimed light transmission would obviously have been provided by the process disclosed by Nelson et al. Note *In re Best*, 195 USPQ 433, footnote 4 (CCPA 1977) as to the providing of this rejection under 35 USC 103 in addition to the rejection made above under 35 USC 102. Therefore, claims 7, 10, 11, 13, 14, 16, 18, 21, 22, and 24 are rejected.

***Claim Rejections - 35 USC § 103***

8. Claims 8, 9, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson et al.

The features of Nelson et al. have been set forth above. While Nelson et al. discloses that a pattern is added to the cloth to provide camouflage in various environments, Nelson et al. fails to teach using images of objects such as trees or rocks in the camouflage design. However, it would have been obvious to one of ordinary skill in the art to produce a camouflage design pattern which would include objects such as trees or rocks which would be present in the surrounding environment on the laminate produced by Nelson et al., so that the laminate would blend into the surrounding environment. Therefore, claims 8, 9, 19, and 20 are rejected.

9. Claims 12, 15, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nelson et al.

The features of Nelson et al. have been set forth above. While Nelson et al. discloses that the woven fabric is made from polyester yarns, Nelson et al. fails to teach that the yarns are textured. However, it would have been obvious to one having ordinary skill in the art to choose

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textured yarns, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416.

One of ordinary skill in the art would be motivated to choose textured yarns to produce a bulkier fabric which is softer and has a better hand or feel. Therefore, claims 12, 15, and 23 are rejected.

10. Claims 9 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sandt et al.

The features of Sandt et al. have been set forth above. Sandt et al. teaches that the laminates can be decorated with different pictorial and/or printed designs (page 1, paragraph 1). However, Sandt et al. fails to teach the objects are trees, branches, twigs, or rocks. However, it would have been obvious to one of ordinary skill in the art to choose trees or rocks, or other objects when for the design or image in the laminate taught by Sandt et al. when the label or decal is designed to display environmental or outdoor objects. Therefore, claims 9 and 20 are rejected.

11. Claims 11 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sandt et al.

The features of Sandt et al. have been set forth above. Sandt et al. fails to teach the basis weight of the laminate. It would have been obvious to one having ordinary skill in the art at the time the invention was made to choose a basis weight of less than 5.0 oz/yd<sup>2</sup>, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 220 F.2d 454, 105 USPQ 233 (CCPA 1955). One of ordinary skill in the art would be motivated to make a laminate which is adhered to other substrates as light as possible so that the laminate will stick to

the additional substrates without falling off. Further, a lighter laminate would be more flexible. Therefore, claims 11 and 22 are rejected.

12. Claims 12, 14, 15, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sandt et al.

The features of Sandt et al. have been set forth above. Sandt et al. fails to teach that the woven fabric is made from polyester. However, it would have been obvious to one having ordinary skill in the art to choose polyester yarns, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416. One of ordinary skill in the art would be motivated to choose polyester yarns due to the good strength properties and abrasion resistance of the yarns. Further, polyester has good thermal stability and is readily available. Therefore, claim 14 is rejected.

Additionally, Sandt et al. fails to teach that the yarns are textured. However, it would have been obvious to one having ordinary skill in the art to choose textured yarns, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use, as set forth above. One of ordinary skill in the art would be motivated to choose textured yarns to produce a bulkier fabric which is softer and has a better hand or feel. Therefore, claims 12, 15, and 23 are rejected.

***Allowable Subject Matter***

13. Claims 1, 2, and 4 – 6 are allowed.

14. Claim 3 would be allowable if rewritten to overcome the objection, set forth in this Office action.

15. The following is an examiner's statement of reasons for allowance: The prior art fails to teach a composite textile material made from a woven texturized polyester fabric which is coated on a first surface with a layer of ethylene methyl acrylate and carbon black pigments, and coated on a second surface with a design pattern. While the prior art teaches coating textile layers with thermoplastic films which are pigmented, the prior art fails to teach or fairly suggest using a coating comprising ethylene methyl acrylate and carbon black pigment to coat a fabric layer with a design pattern on the opposite surface of the fabric.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (703) 605-1170. The examiner can normally be reached on Monday - Friday (8:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Jenna-Leigh Befumo  
June 29, 2003



CHERYL A. JUSKA  
PRIMARY EXAMINER